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APPLICATION NO. 08/796,305	FILING DATE 02/07/97	FIRST NAMED INVENTOR KILIBWA M	ATTORNEY DOCKET NO. CULTOR 10205 <sup>mk</sup>
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IM52/0512

EXAMINER TRAN LIEN T
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ART UNIT 1761	PAPER NUMBER 18
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DATE MAILED: 05/12/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

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# Office Action Summary

Application No.  
**08/796,305**

Applicant(s)  
**Kiliwa**

Examiner  
**Lien Tran**

Group Art Unit  
**1761**



☒ Responsive to communication(s) filed on Apr 21, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 30-63 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 30-63 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Claims 39-47 and 56-63 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed March 29, 1999, applicant amended claims 39 and 56 to change yeast to leavening agent; this does not have support in the original disclosure. Leavening agent includes chemical leavening agent such as leavening acid and base. The original disclosure only discloses bread product containing yeast; there is no disclosure of a bread product containing chemical leavening agent. Thus, the changing of yeast to a leavening agent broadens the scope of the claims without support in the original disclosure. Also, the change of the amount of polydextrose from 5 to 10% does not have support in the original disclosure because the specification discloses an amount of 1-5% for bread product.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 30-31,36,48-50 rejected under 35 U.S.C. 102(b) as being anticipated by Dartey et al. (4678672).

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Dartey et al disclose a method of making baked product by combining flour, polydextrose, emulsifier, yeast, cellulosic bulking agent and water to make a dough and baking the dough (see col. 5 and the examples). The polydextrose is used in amount of 5-20% by weight.

The amount of polydextrose based on the weight of flour can be 5.5% which falls within the range claimed. This calculation is based on the maximum amount of flour and the minimum amount of polydextrose. Dartey et al disclose the flour can be from about 25-85% and the polydextrose can be from about 5-20%. While the examples show a higher amount of polydextrose, the examples are not the only embodiment of the disclosure. The cellulosic bulking agent is the fiber agent. The property of anti-staling is inherent in the Dartey et al product because the same material is used. Thus, the reference meets all the limitations of the claims.

4. Claims 30-32,34,39-41,43,48-49,51-52,56-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Engelbrecht et al.

Engelbrecht et al disclose a method of making a baked product by forming a baking dough comprising flour, yeast, water and polydextrose (see col. 3 line 58 and table 1 ). The amount of polydextrose used is from above 2% to 15% based on the weigh of the flour ( see col. 3 lines 50-51 and the claims). The baked product is a bread and the dough contains sugar (see col. 4 ).

The amount of polydextrose falls within the ranges claimed. The property of anti-staling is inherent in the Engelbrecht et al product because the same material is used. The reference discloses all the limitations of the claims.

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5. Claims 37-38,54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dartey et al. (4678672) in view of the textbook " The Encyclopedia of Chemical Technology ".

Dartey et al do not disclose adding an enzyme.

The textbook " The Encyclopedia of Chemical Technology " teaches to add enzyme such as amylase to dough to improve volume, texture and keeping properties. Proteolytic enzymes can also be used to reduce mixing time of dough and to make dough more pliable.

It would have been obvious to one skilled in the art at the time of the invention to add enzyme to the Dartey et al dough for the reasons taught by the textbook. Adding an additive for its art-recognized function would have been obvious to one skilled in the art.

6. Claims 33,35,37-38,42,45-47,53-55 and 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelbrecht et al.

Engelbrecht et al do not disclose adding enzymes and mono or diglyceride, using an intense sweetener and the process of making the bread as exemplified claim 33.

The textbook " Encyclopedia of Chemical Technology " teaches that it is common to add surfactants such as monoglyceride to yeast-raised dough product such as bread to function as crumb softener or dough strengthener. It also teaches to add enzyme such as amylase to dough to improve volume , texture and keeping properties. Enzyme is added to bread to slow down the firming of bread. Proteolytic enzymes can also be used to reduce mixing time of dough and to make dough more pliable.

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It would have been obvious to one skilled in the art at the time of the invention to add enzyme and monoglyceride to the Engelbrecht et al dough for the purposes and benefits taught by the textbook. The processes by which the bread made as claimed are conventional processes for making bread and would have been obvious to one skilled in the art. The selection of the type of sweetener would have been an obvious matter of choice.

7. Claims 44 and 60 are allowable over the prior art because there is no suggestion to add a fiber in addition to the polydextrose to the Engelbrecht et al bread product. While Dartey et al teach adding both polydextrose and fiber, there is no suggestion in Dartey et al to make a bread product.

8. Applicant's arguments with respect to claims 30-63 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

May 10, 1999

  
LIEN TRAN  
PRIMARY EXAMINER